

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

X

SHEET METAL WORKERS' NATIONAL  
PENSION FUND, NATIONAL ENERGY  
MANAGEMENT INSTITUTE COMMITTEE FOR  
THE SHEET METAL AND AIR CONDITIONING  
INDUSTRY, SHEET METAL OCCUPATIONAL  
HEALTH INSTITUTE TRUST, INTERNATIONAL  
TRAINING INSTITUTE FOR THE SHEET METAL  
AND AIR CONDITIONING INDUSTRY, and  
NATIONAL STABILIZATION AGREEMENT OF  
THE SHEET METAL INDUSTRY FUND

Plaintiffs,

CV-11-5081 (SJF)(AKT)

-against-

COOL SHEETMETAL, INC., RICHARD KERN,  
as an individual, and THOMAS RAMMELKAMP,

Defendants.

X

ORDER

**FILED**  
IN CLERK'S OFFICE  
U S DISTRICT COURT E D N Y

★ NOV 09 2012 ★

LONG ISLAND OFFICE

FEUERSTEIN, J.

I. Background

On October 19, 2011, plaintiffs Sheet Metal Workers' National Pension Fund, National Energy Management Institute Committee for the Sheet Metal and Air Conditioning Industry, Sheet Metal Occupational Health Institute Trust, International Training Institute for the Sheet Metal and Air Conditioning Industry and National Stabilization Agreement of the Sheet Metal Industry Fund (collectively, "plaintiffs"), all of which are multi-employer, employee benefit plans, commenced this action pursuant to Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1132, against defendants Cool Sheetmetal, Inc. ("Cool Sheetmetal"), Richard Kern ("Kern") and Thomas Rammelkamp ("Rammelkamp") (collectively, "defendants") seeking *inter alia* to collect delinquent fringe benefits contributions, interest, liquidated damages and late fees in the total amount of one million two hundred four thousand eight hundred eighty-four dollars and forty-three

cents (\$1,204,884.43), plus costs and attorney's fees. On or about May 10, 2012, plaintiffs served defendants with a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure for partial summary judgment on their claim seeking to assign liability for payment of the delinquent contributions to Kern (seventh claim for relief), which, pursuant to my individual rules, was filed with the Court on June 14, 2012. On June 4, 2012, counsel for defendants filed a letter with the Court indicating Kern's consent to entry of an order granting the relief requested in plaintiffs' motion<sup>1</sup>. Accordingly, plaintiffs' motion for partial summary judgment against Kern, as an individual (seventh claim for relief), is granted and it is hereby ordered that Kern is personally liable for delinquent contributions, interest, penalties, late fees, attorney's fees and costs in amounts to be proven at trial. See 29 U.S.C. § 1109(a); LoPresti v. Terwilliger, 126 F.3d 34, 39-41 (2d Cir. 1997).

## II. Conclusion

Plaintiffs' motion pursuant to Rule 56 of the Federal Rules of Civil Procedure for partial summary judgment against Kern, as an individual, is granted upon consent. In light of this determination, plaintiffs' application for a hearing or conference (Doc. No. 20) is denied and the trial will proceed as scheduled on December 10, 2012 at 10:00 a.m.

SO ORDERED.

s/ Sandra J. Feuerstein

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SANDRA J. FEUERSTEIN  
United States District Judge

Dated: November 9, 2012  
Central Islip, N.Y.

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<sup>1</sup> Although I initially referred plaintiffs' motion to the Honorable A. Kathleen Tomlinson, United States Magistrate Judge, for a report and recommendation, I subsequently informed Magistrate Judge Tomlinson that I would vacate the referral order since defendants were consenting to the relief being sought by plaintiffs. However, due to my oversight, I never issued an order vacating the referral. Accordingly, the June 18, 2012 referral order is hereby vacated.